



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200744021

AUG - 7 2007

LEGEND:

Company A:

Plan X:

Dear

This letter is in response to a request for a ruling letter submitted on your behalf by your authorized representative on May 26, 2006, as supplemented by letters dated December 20, 2006, and July 17, 2007, concerning the application of section 409(l) of the Internal Revenue Code ("Code") to certain shares of common stock held by Plan X. Your authorized representative has submitted the following facts and representations in support of this request.

Company A adopted Plan X in . Plan X, a stock bonus plan, is intended to be qualified under Code section 401(a) and is intended to be an employee stock ownership plan ("ESOP") within the meaning of Code section 4975(e)(7).

Your authorized representative has represented that Company A, pursuant to its certificate of incorporation, has two classes of preferred stock and five classes of common stock. Your authorized representative has further represented that neither class of preferred stock is convertible into any other class of Company A stock within the meaning of Code section 409(l)(3). One of the five classes of common stock is the ESOP Common Stock, which is issued by Company A's Board of Directors in separate series (the other classes of common stock are referred to collectively as the "Other Classes"). Each series of ESOP Common Stock may have a separate rate of dividends known as "ESOP Preference Dividends" ("Special Dividends"), and ESOP Common Stock is the only class that can receive Special Dividends. There are currently two series of ESOP Common Stock. Plan X holds all outstanding shares of both series and has held no other Company A stock.

Company A's certificate of incorporation provides in general that, after the Special Dividends are paid, Company A's Board of Directors may declare additional dividends on the five classes of common stock, subject to the requirements that (i) in no event may the per share dividend declared upon one or more of the Other Classes exceed the per share dividend declared upon the ESOP Common Stock, and (ii) if the Board of Directors of Company A declares a dividend upon one or more of the Other Classes, then an equal dividend must be declared upon the ESOP Common Stock. Your authorized representative has represented that the certificate of incorporation allows Company A's Board of Directors to declare a dividend on the ESOP Common Stock that is higher than the dividend declared on the Other Classes, and could also declare a dividend on the ESOP Common Stock without declaring any dividend on the Other Classes.

On February 5, , Company A's Board of Directors designated the first series of ESOP Common Stock ("Series A"), with a Special Dividend payable through the period ending on February 11, . On September 20, , Company A's Board of Directors designated the second series of ESOP Common Stock ("Series B"), which does not have a Special Dividend.

The two classes of preferred stock and three of the Other Classes, including the ESOP Common Stock, have one vote per share, with all shares voting together as a single class. The other two classes have no voting rights. According to Company A's certificate of incorporation, certain major corporate actions may not be taken without the affirmative vote of the holders of a majority of the shares of stock of Company A of all voting classes (without distinction between classes) and without also the affirmative vote of the holders of a majority of the shares of a specified preferred class of stock, voting separately as a class. Certain other actions involving changes in the computation of adjusted book value and restrictions on transfer of shares may not be taken without the affirmative vote of 75% of the shares of the ESOP Common Stock and a specified class that is ordinary common stock, voting together. The holders of one class of preferred stock have the right to elect six of Company A's directors, and the holders of the other class of preferred stock, together with the holders of ESOP Common Stock and the holders of two of the Other Classes, have the right to elect the remaining 11 directors elected by the shareholders, voting together as a single class.

Company A owns interests in numerous subsidiaries. Neither Company A nor any other member of its controlled group of corporations has any stock outstanding that is tradable on any securities market. Accordingly, we are assuming for purposes of this ruling that neither Company A nor any other member of its controlled group of corporations has any stock that is readily tradable on an established securities market within the meaning of Code section 409(l)(1). Company A represents that its ESOP Common Stock has a combination of voting power and dividend rights equal to or in excess of: (a) that class of common stock of any Company A subsidiary which constitutes a member of the same controlled group with Company A as defined in Code section 409(l) ("Subsidiary") having the greatest voting power of any Subsidiary common stock; and (b) that class of common stock of any Subsidiary having the greatest dividend rights of any Subsidiary common stock.

Plan X provides that all ESOP distributions shall be in cash, in accordance with Company A's certificate of incorporation, which your authorized representative has represented restricts the ownership of substantially all outstanding ESOP Common Stock to employees or to a trust described in Code section 401(a).

Your authorized representative has requested rulings to the effect of the following on your behalf:

1. Company A's ESOP Common Stock (Series A and Series B) constitutes "employer securities" within the meaning of Code section 409(l) without regard to the complete payment of all Series A ESOP Special Dividends due through February 11, ; and
2. Plan X will not fail to be a qualified plan under Code section 401(a) and an ESOP under Code section 4975(e)(7) merely because its participants do not have the right to demand that their distributions be paid in the form of employer securities.

Code section 409(l)(1) states that the term "employer securities" means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

Code section 409(l)(2) states that if there is no common stock which meets the requirements of section 409(l)(1), the term "employer securities" means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of (A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and (B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

Code section 409(l)(3) provides in part that noncallable preferred stock shall be treated as employer securities if such stock is convertible at any time into stock which meets the requirements of paragraph (1) or (2) (whichever is applicable).

Code section 409(l)(4) states in part that, for purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

With respect to your requested ruling 1, your authorized representative has represented that neither Company A nor any other member of its controlled group of corporations has any stock outstanding that is tradable on any securities market, and we are assuming for purposes of this ruling that neither Company A nor any other member of its controlled group of corporations has any stock that is readily tradable on an established securities market within the meaning of Code section 409(l)(1). Therefore, there is no common stock within the meaning of Code section 409(l)(1), and the existence of "employer securities" will be determined under section 409(l)(2). Your authorized representative has represented that the ESOP Common Stock and the Other

Classes are common stock. In addition, your authorized representative has further represented that neither class of preferred stock is convertible into any other class of Company A stock within the meaning of Code section 409(1)(3).

With respect to voting rights, two of the five classes of common stock have none. The other three classes of common stock, including the ESOP Common Stock, vote together with the two classes of preferred stock and have one vote per share, with all shares voting together as a single class. Certain major corporate actions may not be taken without the affirmative vote of the holders of a majority of the shares of stock of Company A of all voting classes (without distinction between classes) and without also the affirmative vote of the holders of a majority of the shares of a specified preferred class of stock, voting separately as a class. Certain corporate actions involving changes in the computation of adjusted book value and restrictions on transfer of shares may not be taken without the affirmative vote of 75% of the shares of the ESOP Common Stock and a specified class that is ordinary common stock, voting together. The holders of one class of preferred stock, together with the holders of ESOP Common Stock and the holders of two of the Other Classes, have the right to elect 11 of the 17 directors, voting together as a single class. The remaining directors are elected by the holders of the other class of preferred stock. Your authorized representative has represented that the ESOP Common Stock has voting power equal to or in excess of that class of common stock of any Subsidiary having the greatest voting power of any Subsidiary common stock.

With respect to dividend rights, ESOP Common Stock (Series A and Series B) is the only class that can receive Special Dividends, and additional dividends on the ESOP Common Stock and the Other Classes may only be declared after any Special Dividends have been paid. Additional dividends are subject to the requirements that (i) in no event may the per share dividend declared upon one or more of the Other Classes exceed the per share dividend declared upon the ESOP Common Stock, and (ii) if Company A's Board of Directors declares a dividend upon one or more of the Other Classes, then an equal dividend must be declared upon the ESOP Common Stock. Your authorized representative has represented that Company A's certificate of incorporation allows Company A's Board of Directors to declare a dividend on the ESOP Common Stock that is higher than the dividend declared on the Other Classes, and could also declare a dividend on the ESOP Common Stock without declaring any dividend on the Other Classes. Your authorized representative has also represented that the ESOP Common Stock has dividend rights equal to or in excess of that class of common stock of any Subsidiary having the greatest dividend rights of any Subsidiary common stock.

Therefore, the ESOP Common Stock (Series A and Series B) is common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of (A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and (B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

Accordingly, based on the above facts and representations, we conclude with respect to your ruling request 1 that Company A's ESOP Common Stock (Series A and Series B) constitutes

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“employer securities” within the meaning of Code section 409(l)(2) without regard to the complete payment of all Series A ESOP Special Dividends due through February 11,

With respect to ruling request 2, Code section 401(a)(23) states that a stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (o) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term “employer securities” shall include any securities of the employer held by the plan.

Code section 409(h)(1)(A) states that a participant who is entitled to a distribution from the plan has a right to demand that his benefits be distributed in the form of employer securities.

Code section 409(h)(2)(A) states that a plan which otherwise meets the requirements of this subsection or of section 4975(e)(7) shall not be considered to have failed to meet the requirements of section 401(a) merely because under the plan the benefits may be distributed in cash or in the form of employer securities.

Code section 409(h)(2)(B)(i) states that a plan to which this subparagraph applies shall not be treated as failing to meet the requirements of this subsection or section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that the participant entitled to a distribution has a right to receive the distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B).

Code section 409(h)(2)(B)(ii)(I) provides in pertinent part that plans which otherwise meet the requirements of section 409(h) or section 4975(e)(7) and which are established and maintained by an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a) may provide for the distribution of benefits in cash.

For purposes of Code section 409(h), the term “employer securities” is defined in section 409(l).

We ruled in ruling 1 above that the ESOP Common Stock (Series A and Series B) constitutes “employer securities” with the meaning of Code section 409(l)(2). Your authorized representative has represented that Company A’s certificate of incorporation restricts the ownership of substantially all outstanding ESOP Common Stock to employees or to a trust described in Code section 401(a). Therefore, with respect to your requested ruling 2, Plan X meets the exception set forth in section 409(h)(2) and we conclude that Plan X will not fail to be a qualified plan under Code section 401(a) and an ESOP under Code section 4975(e)(7) merely because its participants do not have the right to demand that their distributions be paid in the form of employer securities.

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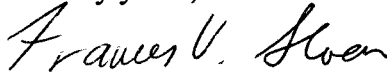
This ruling letter is based on the assumption that Plan X is qualified under Code section 401(a) at all times relevant to the transaction described herein and that it is an ESOP as described in section 4975(e)(7).

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this ruling letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

If you have any questions, please contact
Please refer to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures
Notice 437
Deleted copy of ruling letter

cc: